

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Willie James Asbury, #200788,  
*Aka Sa'id Abdullah al'Rashid,*

Plaintiff,

v.

David Tartarsky, et al.,

Defendants.

No. 8:13-cv-3364-RMG

**ORDER**

This matter is before the Court on the Report and Recommendation of the Magistrate Judge ("R&R") recommending the Court deny Plaintiff's motion for a preliminary injunction and temporary restraining order. (Dkt. No. 33). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

**Background**

Plaintiff, a state prisoner proceeding pro se and *in forma pauperis*, brings this action pursuant to 42 U.S.C. § 1983. (Dkt. No. 1). Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. Plaintiff subsequently filed a motion for preliminary injunction and temporary restraining order requesting orthopedic shoes and an assistive walking device. (Dkt. No. 29). The Magistrate Judge then issued the present R&R recommending the Court deny the motion. (Dkt. No. 33). Plaintiff then filed objections to the R&R. (Dkt. No. 41).

**Legal Standard**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making

a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

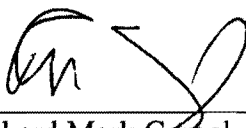
### **Discussion**

After review of the record, the R&R, and Plaintiff’s objections, the Court finds that the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and adopts the R&R as the order of the Court. The Court agrees that Plaintiff has failed to satisfy the heavy burden required to obtain preliminary injunctive relief. Particularly, the Court agrees that Plaintiff cannot show a likelihood of irreparable harm where he waited more than three years to bring these allegations before the Court. Plaintiff’s objection, addressing when conspiracy claims may be raised, is unresponsive to the requirement of irreparable injury.

### **Conclusion**

For the reasons set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 33). Accordingly, Plaintiff’s motion is denied. (Dkt. No. 29).

**AND IT IS SO ORDERED.**

  
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Richard Mark Gergel  
United States District Court Judge

April 22, 2014  
Charleston, South Carolina